

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

STEPHEN UPTON,

Plaintiff,

v.

Case No.: 3:19-cv-00831

WALMART, INC.,

Defendant.

ORDER

Pending is Plaintiff's Motion to Amend the Complaint, Motion to Compel Discovery and Motion for Sanctions. (ECF No. 14). Local Rule of Civil Procedure 37.1(b) requires that *before* a party files a discovery motion—such as a motion to compel or a motion for sanctions—the party must make a good faith effort to confer with the adverse party to see if the discovery dispute can be resolved. The moving party (in this case, Plaintiff) bears the burden of arranging for the meet and confer session. The discovery motion must include a certification from the moving party that it has in good faith conferred or attempted to confer with the adverse party in an effort to resolve the dispute without court intervention. *See* Fed. R. Civ. P. 37(a)(1). Plaintiff's discovery motion does not include this certification.

Local Rule of Civil Procedure 37.1(c) requires that a motion to compel discovery be accompanied by a statement setting forth verbatim the discovery requests and their responses, which the movant alleges are inadequate. This requirement is only obviated if the discovery request was entirely ignored. *Id.* Plaintiff states in his motion that he did receive answers to discovery, but the answers are all unacceptable. However, Plaintiff has

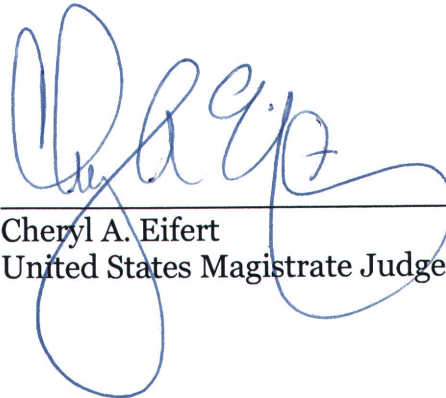
failed to attach to his motion, or state verbatim, the discovery requests and their allegedly inadequate answers.

Accordingly, Plaintiff is **ORDERED** to meet and confer with adverse counsel, if this has not already been done, and then provide a certification that the meet and confer session was conducted in good faith and completed, setting forth any resolution that was achieved. Plaintiff is further **ORDERED** to file the inadequate discovery requests and answers with the Clerk of Court. Plaintiff shall have **fourteen days** to complete these tasks.

Defendant's response to the Motion to Compel and Motion to Sanctions shall be due **fourteen days** after Plaintiff files the certification and disputed discovery, as ordered above. Defendant's response to the Motion to Amend, however, is due as directed by Local Rule of Civil Procedure 7.1(a)(7).

The Clerk is directed to provide a copy of this Order to Plaintiff and counsel of record.

ENTERED: February 26, 2020



Cheryl A. Eifert
United States Magistrate Judge